

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TONY MARTHALER
Claimant

VS.

IBP, INC.
Respondent,
Self-Insured

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Docket No. 248,167

ORDER

Respondent appealed the January 19, 2001 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

This is a claim for a September 2, 1999 accident and alleged injuries to the right hand and wrist. The issue before the Judge at the preliminary hearing was whether claimant's present need for right wrist surgery was caused by the September 1999 accident or whether the need for surgery was caused as the result of a new and separate accident. The Judge found the need for surgery to be the result of the September 2, 1999 work-related accident and granted claimant's request for medical treatment.

Respondent contends Judge Avery erred. It argues that claimant sustained a new and separate accident while roofing a house and, therefore, it should not be responsible for the recommended surgery. Conversely, claimant contends that the preliminary hearing Order should be affirmed. Claimant argues that he has had ongoing problems with his right wrist following the September 1999 accident as his wrist symptoms would flare up with any physical activity. Therefore, claimant contends the recommended wrist surgery is directly related to the September 1999 accident rather than to a new and separate injury.

The only issue before the Board on this appeal is whether the recommended right wrist surgery is directly related to claimant's September 1999 work-related injury or whether it is related to a new and separate accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

1. The preliminary hearing Order should be affirmed.
2. The Board affirms the Judge's conclusion that claimant's present need for right wrist surgery is directly related to the September 2, 1999 accident that claimant sustained while working for respondent. On that date, claimant was assembling electrical conduit when he felt a pop in the back of his right hand and also felt a sharp pain in the back of his hand that extended towards his elbow. Claimant then developed a mass in the back of his right hand.
3. Following the accident, claimant treated with Dr. Reed. When Dr. Reed released claimant in approximately February 2000, claimant had ongoing symptoms and requested additional medical treatment. From a list of three physicians provided by respondent, claimant elected to see Dr. Lynn D. Ketchum.
4. Dr. Ketchum first saw claimant in March 2000 and identified a mass on the dorsum of the "CMC" joint. At that first visit, the doctor recommended conservative treatment but noted that surgery would be recommended if claimant continues to have pain with activity. The doctor's March 23, 2000 office notes read, in part:

... At 2 p.m. on September 2, 1999, he [claimant] felt a pop on the back of his right wrist while twisting a 10-foot piece of conduit. The pain that he had was over the dorsum of the CMC joint on the right. At present, there is a mobile mass on the dorsum of that CMC joint with pain in the area that requires him to take pain medication. Depending upon what he does, it either doesn't bother him or it bothers him a lot; for example, if he engages in martial arts sometimes he can't use that wrist for a couple of days. Currently, he is working at Emporia State as an electronics technician and does not do nearly the degree of physical labor that he did at IBP; therefore, he is somewhat better. If he does turn wrenches or screwdrivers, then he pays for it.

...

My recommendation is for him to take naproxen 500 mg a day with the main meal for three months to treat this conservatively and to reevaluate it. If it is still a problem at that time and the mass is still present, or if he is still having pain with activity, then I am going to recommend removing the cyst and metacarpal boss.

5. According to claimant, Dr. Ketchum released him without restrictions. But the record does not disclose the date of that release. Although released from medical treatment, claimant continued to experience symptoms as he would experience a flare-up in symptoms whenever he would perform manual labor. In approximately September 2000, claimant tried helping a friend repair a roof but he experienced increased right wrist and

hand symptoms and couldn't grip his hammer after approximately 45 minutes. On other occasions, claimant attempted doing manual labor but experienced both inflammation and severe pain in his wrist. Claimant had none of these symptoms before the September 2, 1999 accident.

6. In September 2000, claimant returned to Dr. Ketchum, who recommended that claimant have outpatient surgery to remove the metacarpal boss and attendant synovitis.

7. The Board concludes that claimant's present need for surgery is directly related to the September 2, 1999 accident. Claimant's testimony is persuasive that the symptoms from the accident never completely resolved as he would experience a flare-up of symptoms whenever he used his right hand to perform any labor. The greater weight of the evidence indicates that once Dr. Ketchum realized that normal use of claimant's hand caused increased symptoms, the doctor determined that surgery was appropriate.

8. The Board also finds and concludes that the evidence establishes that claimant's employment with Emporia State University was much lighter and physically easier than claimant's employment with respondent and, therefore, unlikely to constitute a new and separate injury. Likewise, the evidence fails to establish that claimant sustained a new and separate injury when he tried helping a friend repair a roof. Weighing all the evidence, the Board concludes claimant's present need for surgery is the probable consequence of the September 1999 work-related accident.

WHEREFORE, the Board affirms the January 19, 2001 preliminary hearing Order.

IT IS SO ORDERED.

Dated this ____ day of March 2001.

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
Bradley D. Thornton, Dakota City, NE
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director